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CHAPTER 8412. VARNER CREEK UTILITY DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

| | | |
|----------------|--|---|
| Sec. 8412.001. | DEFINITIONS | 1 |
| Sec. 8412.002. | NATURE OF DISTRICT | 2 |
| Sec. 8412.003. | FINDINGS OF BENEFIT AND PUBLIC PURPOSE | 3 |
| Sec. 8412.004. | DISTRICT TERRITORY | 4 |

SUBCHAPTER B. BOARD OF DIRECTORS

| | | |
|----------------|--------------------------------|---|
| Sec. 8412.051. | COMPOSITION OF BOARD | 5 |
| Sec. 8412.052. | BOARD VACANCY | 7 |

SUBCHAPTER C. POWERS AND DUTIES

| | | |
|----------------|---|---|
| Sec. 8412.101. | MUNICIPAL UTILITY DISTRICT POWERS | 9 |
|----------------|---|---|

CHAPTER 8412. VARNER CREEK UTILITY DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 8412.001. DEFINITIONS. In this chapter:

(1) "Board" means the district's board of directors.

(2) "Director" means a member of the board.

(3) "District" means the Varner Creek Utility District. (Acts 62nd Leg., R.S., Ch. 352, Sec. 1 (part); New.)

Source Law

Sec. 1. . . . [a . . . district] . . . to be known as "Varner Creek Utility District," hereinafter called the "district,"

Revisor's Note

The definitions of "board" and "director" are added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the

1 substance of the definitions.

2 Revised Law

3 Sec. 8412.002. NATURE OF DISTRICT. The district is a
4 conservation and reclamation district in Brazoria County created
5 under Section 59, Article XVI, Texas Constitution. (Acts 62nd
6 Leg., R.S., Ch. 352, Sec. 1 (part).)

7 Source Law

8 Sec. 1. . . . there is hereby created and
9 established, under and pursuant to the provisions of
10 Article XVI, Section 59 of the Constitution of Texas, a
11 conservation and reclamation district in Brazoria
12 County, Texas, . . . which shall be a governmental
13 agency and a body politic and corporate. . . .

14 Revisor's Note

15 (1) Section 1, Chapter 352, Acts of the 62nd
16 Legislature, Regular Session, 1971, provides that the
17 district is "created and established." The revised
18 law omits "established" because the meaning of that
19 word is included in the meaning of "created."

20 (2) Section 1, Chapter 352, Acts of the 62nd
21 Legislature, Regular Session, 1971, provides that the
22 district is created notwithstanding certain laws
23 relating to consent. The revised law omits that
24 provision as executed because the district has been
25 created. The omitted law reads:

26 Sec. 1. Notwithstanding provisions
27 of the general laws relating to consent by
28 political subdivisions for the creation of
29 conservation and reclamation districts,
30 [there is hereby created . . . a
31 conservation and reclamation district]
32

33 (3) Section 1, Chapter 352, Acts of the 62nd
34 Legislature, Regular Session, 1971, refers to the
35 district as "a governmental agency and a body politic
36 and corporate." The revised law omits the quoted
37 language because it duplicates a portion of Section
38 59(b), Article XVI, Texas Constitution, which provides
39 that a conservation and reclamation district is a

1 governmental agency and a body politic and corporate.

2 Revised Law

3 Sec. 8412.003. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a)

4 The district is created to serve a public use and benefit.

5 (b) All land and other property included in the boundaries
6 of the district will benefit from the works and projects
7 accomplished by the district under the powers conferred by Section
8 59, Article XVI, Texas Constitution.

9 (c) The creation of the district is essential to accomplish
10 the purposes of Section 59, Article XVI, Texas Constitution. (Acts
11 62nd Leg., R.S., Ch. 352, Secs. 1 (part), 3.)

12 Source Law

13 Sec. 1. . . . The creation and establishment of
14 the district is hereby declared to be essential to the
15 accomplishment of the purposes of Article XVI, Section
16 59 of the Constitution of Texas.

17 Sec. 3. It is determined and found that all of
18 the land and other property included within the area
19 and boundaries of the district will be benefited by the
20 works and project which are to be accomplished by the
21 district pursuant to the powers conferred by the
22 provisions of Article XVI, Section 59 of the
23 Constitution of Texas, and that said district is
24 created to serve a public use and benefit.

25 Revisor's Note

26 (1) Section 1, Chapter 352, Acts of the 62nd
27 Legislature, Regular Session, 1971, provides that the
28 "creation and establishment" of the district are
29 essential to accomplish the purposes of Section 59,
30 Article XVI, Texas Constitution. The revised law
31 omits "establishment" because its meaning is included
32 in the meaning of "creation."

33 (2) Section 3, Chapter 352, Acts of the 62nd
34 Legislature, Regular Session, 1971, refers to land and
35 other property included within the "area and
36 boundaries of the district." The revised law omits the
37 reference to "area" because, in context, "area" is
38 included in the meaning of "boundaries."

1 the reader's convenience, the revised law includes
2 references to the statutory description of the
3 district's territory and to the authority to change the
4 district's territory under Subchapter H, Chapter 54,
5 Water Code, applicable to municipal utility districts,
6 and under Subchapter J, Chapter 49, Water Code,
7 applicable to the district under Sections 49.001 and
8 49.002 of that chapter. The revised law also includes
9 a reference to the general authority of the
10 legislature to enact a law to change the district's
11 territory.

12 (2) Section 2, Chapter 352, Acts of the 62nd
13 Legislature, Regular Session, 1971, provides that a
14 mistake in the description of the district boundaries
15 does not affect the right of the district to issue "any
16 type of bonds or refunding bonds." The revised law
17 omits the reference to "refunding bonds" because
18 refunding bonds are included in the meaning of "any
19 type of bonds."

20 (3) Section 2, Chapter 352, Acts of the 62nd
21 Legislature, Regular Session, 1971, refers to the
22 district's authority to "assess, levy and collect"
23 taxes. The revised law substitutes "impose" for
24 "assess, levy and collect" because "impose" is the
25 term generally used in Title 1, Tax Code, and includes
26 the assessment, levy, and collection of a tax.

27 SUBCHAPTER B. BOARD OF DIRECTORS

28 Revised Law

29 Sec. 8412.051. COMPOSITION OF BOARD. The board is composed
30 of five elected directors. (Acts 62nd Leg., R.S., Ch. 352, Sec. 6
31 (part).)

32 Source Law

33 Sec. 6. . . . Succeeding directors shall be
34 elected or

Revisor's Note

(1) Section 6, Chapter 352, Acts of the 62nd Legislature, Regular Session, 1971, refers to the initial board of directors and that board's vacancy procedures. The revised law omits the language as executed. The omitted law reads:

Sec. 6. Immediately after this Act becomes effective, the following named persons shall be the directors of the district and shall constitute the board of directors of the district:

Charles A. Lingo
E. R. Karter
W. R. Bell, Jr.
Clyde A. Wilson, Sr.
J. D. Weaver, Jr.

Said persons shall qualify to serve as directors prior to the first meeting of the board of directors. Should any of the above named directors fail to qualify for any reason, the remaining named directors shall appoint someone to fill such vacancy or vacancies; The directors above named or their duly appointed and qualified successor or successors shall serve until the second Saturday in January, 1973. . . .

(2) Section 6, Chapter 352, Acts of the 62nd Legislature, Regular Session, 1971, refers to "[s]ucceeding directors" to distinguish the succeeding directors from the initial directors named in that section. The revised law substitutes "five" for "succeeding" to conform to the number of directors listed in Section 6 (establishing the initial board).

(3) Section 6, Chapter 352, Acts of the 62nd Legislature, Regular Session, 1971, provides for directors to be elected or appointed and to serve for the term and in the manner provided by Chapter 54, Water Code. The revised law omits the reference to Chapter 54 because Chapter 715, Acts of the 74th Legislature, Regular Session, 1995, repealed the relevant provisions of Chapter 54 and enacted similar provisions in Chapter 49, Water Code, including Section 49.103, which governs the terms of office and

manner of election of directors of a municipal utility district that is required by law to elect its directors. The revised law does not substitute a reference to Chapter 49 for the reference to Chapter 54 because Chapter 49 applies to the district under Sections 49.001 and 49.002 of that chapter. The revised law also omits "appointed" because it is clear from the context of Section 6 that the reference applies only to directors appointed to fill vacancies as now provided by Chapter 49. The omitted law reads:

Sec. 6. . . . [Succeeding directors shall be elected or] appointed and shall serve for the term and in the manner provided by Chapter 54, Title 4, Water Code, for directors first elected.

Revised Law

Sec. 8412.052. BOARD VACANCY. (a) Except as provided by Subsection (b), a vacancy in the office of director shall be filled in the manner provided by Section 49.105, Water Code.

(b) The Texas Commission on Environmental Quality shall appoint directors to fill all of the vacancies on the board whenever the number of qualified directors is fewer than three. (Acts 62nd Leg., R.S., Ch. 352, Sec. 6 (part); New.)

Source Law

Sec. 6. . . . [Should any of the above named directors fail to qualify for any reason, the remaining named directors shall appoint someone to fill such vacancy or vacancies;] provided, however, that if at any time the number of qualified directors shall be less than three because of the failure or refusal of one or more directors to qualify or serve or because of his or their death or incapacitation, or for any such other reason, the Texas Water Rights Commission shall appoint the necessary number of directors to fill all vacancies on the board. . . .

Revisor's Note

(1) Section 6, Chapter 352, Acts of the 62nd Legislature, Regular Session, 1971, governs the manner in which multiple board vacancies are filled. Section 49.105, Water Code, governs the manner of filling a vacancy in the office of director of certain

1 districts, including a municipal utility district.
2 Chapter 49, Water Code, applies to the district under
3 Sections 49.001 and 49.002 of that chapter. For that
4 reason and for the convenience of the reader, the
5 revised law adds a reference to Section 49.105.

6 (2) Section 6, Chapter 352, Acts of the 62nd
7 Legislature, Regular Session, 1971, refers to a
8 vacancy in the office of director "because of the
9 failure or refusal of one or more directors to qualify
10 or serve or because of his or their death or
11 incapacitation, or for any such other reason." The
12 revised law omits the quoted language because it
13 merely describes every manner in which a board vacancy
14 may occur without limiting in any way the duty to fill
15 the vacancy.

16 (3) Section 6, Chapter 352, Acts of the 62nd
17 Legislature, Regular Session, 1971, refers to the
18 "Texas Water Rights Commission." The revised law
19 substitutes "Texas Commission on Environmental
20 Quality" for "Texas Water Rights Commission" to
21 reflect a change in the agency's name. In 1977,
22 Section 9, Chapter 870, Acts of the 65th Legislature,
23 Regular Session, abolished the Texas Water Rights
24 Commission and created the Texas Water Commission.
25 The name of the Texas Water Commission was changed to
26 the Texas Natural Resource Conservation Commission by
27 Section 1.085, Chapter 3, Acts of the 72nd
28 Legislature, 1st Called Session, 1991. The name of the
29 Texas Natural Resource Conservation Commission was
30 changed to the Texas Commission on Environmental
31 Quality by Section 18.01, Chapter 965, Acts of the 77th
32 Legislature, Regular Session, 2001. The revised law
33 is drafted accordingly.

1 SUBCHAPTER C. POWERS AND DUTIES

2 Revised Law

3 Sec. 8412.101. MUNICIPAL UTILITY DISTRICT POWERS. The
4 district has the rights, powers, privileges, and functions
5 conferred by general law applicable to a municipal utility
6 district, including Chapters 49 and 54, Water Code. (Acts 62nd
7 Leg., R.S., Ch. 352, Sec. 5 (part); New.)

8 Source Law

9 Sec. 5. The district is hereby vested with, and
10 shall have and exercise, all of the rights, powers,
11 privileges, authority and functions conferred by the
12 general laws of this state applicable to municipal
13 utility districts, including without limitation those
14 conferred by Chapter 54, Title 4, Water Code, but
15

16 Revisor's Note

17 (1) Section 5, Chapter 352, Acts of the 62nd
18 Legislature, Regular Session, 1971, provides that the
19 district "is hereby vested with, and shall have and
20 exercise" certain powers. The revised law substitutes
21 "has" for the quoted language because, in context, the
22 terms are synonymous and "has" is more commonly used.

23 (2) Section 5, Chapter 352, Acts of the 62nd
24 Legislature, Regular Session, 1971, refers to the
25 "rights, powers, privileges, [and] authority" of the
26 district. The revised law omits the reference to
27 "authority" because, in context, "authority" is
28 included in the meaning of "rights, powers, [and]
29 privileges."

30 (3) Section 5, Chapter 352, Acts of the 62nd
31 Legislature, Regular Session, 1971, grants the
32 district certain powers, "including without
33 limitation those conferred by Chapter 54, Title 4,
34 Water Code." The revised law omits "without
35 limitation" because Section 311.005(13), Government
36 Code (Code Construction Act), provides that "includes"
37 and "including" are terms of enlargement and not of

1 limitation and do not create a presumption that
2 components not expressed are excluded.

3 (4) Section 5, Chapter 352, Acts of the 62nd
4 Legislature, Regular Session, 1971, refers to Chapter
5 54, Water Code. For the reader's convenience, the
6 revised law adds a reference to Chapter 49, Water Code,
7 because Chapter 715, Acts of the 74th Legislature,
8 Regular Session, 1995, repealed many provisions of
9 Chapter 54 and enacted similar provisions in Chapter
10 49, Water Code, which applies to the district under
11 Sections 49.001 and 49.002 of that chapter.

12 (5) Section 5, Chapter 352, Acts of the 62nd
13 Legislature, Regular Session, 1971, provides that the
14 act prevails over general law in case of a conflict or
15 other inconsistency and that all general laws
16 applicable to municipal utility districts not in
17 conflict or inconsistent with the provisions of the
18 act are adopted and incorporated by reference. The
19 revised law omits the portion of the provision
20 relating to the act prevailing over general law
21 because it duplicates in substance Section 311.026(b),
22 Government Code (Code Construction Act). The revised
23 law omits the portion of the provision relating to
24 adoption and incorporation of general laws because the
25 portion of Section 5, Chapter 352, revised as this
26 section already provides that those laws apply to the
27 district, and it is unnecessary to further adopt and
28 incorporate those laws in this chapter. The omitted
29 law reads:

30 Sec. 5. . . . if any provision of
31 such general laws shall be in conflict or
32 inconsistent with the provisions of this
33 Act, the provisions of this Act shall
34 prevail. All such general laws applicable
35 to municipal utility districts not in
36 conflict or inconsistent with the
37 provisions of this Act are hereby adopted
38 and incorporated by reference with the same

1 effect as if copied in full in this Act.

2 Revisor's Note
3 (End of Chapter)

4 (1) Section 7, Chapter 352, Acts of the 62nd
5 Legislature, Regular Session, 1971, contains
6 legislative findings relating to the performance of
7 the requirements of Section 59(d), Article XVI, Texas
8 Constitution, and to the authority of the legislature
9 to enact that chapter. The revised law omits the
10 provision as executed. The omitted law reads:

11 Sec. 7. The Legislature specifically
12 finds and declares that the requirements of
13 Article XVI, Section 59(d) of the
14 Constitution of Texas have been performed
15 and accomplished in due course and time and
16 order, and that the Legislature has the
17 power and authority to enact this Act.

18 (2) Section 8, Chapter 352, Acts of the 62nd
19 Legislature, Regular Session, 1971, provides that the
20 act is severable. The revised law omits that provision
21 because it duplicates in substance Section 311.032,
22 Government Code (Code Construction Act), which
23 provides that a provision of a statute is severable
24 from each other provision of the statute that can be
25 given effect. The omitted law reads:

26 Sec. 8. If any word, phrase, clause,
27 paragraph, sentence, part, portion or
28 provision of this Act or the application
29 thereof to any persons or circumstances
30 shall be held to be invalid or
31 unconstitutional, the remainder of the Act
32 shall nevertheless be valid and the
33 Legislature hereby declares that this Act
34 would have been enacted without such
35 invalid or unconstitutional word, phrase,
36 clause, paragraph, sentence, part, portion
37 or provision.